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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1569 of 1993

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not? -No.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

TUSHARBHAI H SHAH

Versus

URVASHIBEN MANUBHAI

Appearance:

Mr.D.R. Bhatt, Advocate, for the Petitioners.

Respondents Nos. 1 to 5 served.

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 21/09/96

ORAL JUDGEMENT

Original defendants Nos.2 and 3 in Summary Suit
No.1870 of 1989 challenge the order dated 2nd November,

1993 made by Judge, City Civil Court (Court No.XV), Ahmedabad, whereby their application dated 24th of May, 1993 for stay of the execution of decree is rejected in their absence.

Respondent No.1 Urvashiben Manubhai had instituted aforementioned Summary Suit for recovery of Rs.70,750/-, against respondent No.2, which is a partnership firm, of which the petitioners and respondents Nos. 3 to 5 were the partners. It appears that once summons for judgment was served, the original defendants sought leave to defend the suit. By the order dated 18th January, 1990, unconditional leave to defend the suit was granted in so far as petitioner No.2 Smitaben is concerned and it was made conditional in so far as petitioner No.1 and respondents Nos. 3 to 5 were concerned, upon their deposit of Rs.15,000/- in cash or by demand draft within six weeks from the date of the order. It is otherwise common ground that neither the first petitioner nor respondents Nos. 2 to 5 complied with the condition of the order, with the result they lost the right to defend the suit. Despite unconditional leave granted to petitioner No.2 and defences filed by her, the suit was decreed on 13th July, 1990, ex parte.

Once the suit was decreed, respondent No.1 initiated Darkhast proceedings, being Darkhast No.57 of 1992. It appears that Jangam Warrant was issued and the petitioners deposited a sum of Rs.35,000/- and on 24th of May, 1993, instituted an application for setting aside the ex parte decree and at the same time, prayed for stay of the execution of the decree, vide Miscellaneous Civil Application No.284 of 1993. The Executing Court, by its order dated 25th May, 1993, granted interim relief, thereby staying the execution of the decree in so far as they are concerned. But, however, the said Miscellaneous Civil Application No.284 of 1993 was, subsequently, rejected by the impugned order on 2nd November, 1993, despite application for adjournment being moved on their behalf.

Various contentions are raised in this Revision Application. In my view, it is not necessary to go into the same. The fact, however, remains that petitioner No.2, Smitaben was granted unconditional leave to defend the suit by the order dated 18th January, 1990 and for that matter, she had even filed written statement. Therefore, prima facie, no decree could have been passed against her without any justification. It is indeed true that petitioner No.1, who is her husband and respondents Nos. 3 to 5, had not complied with the order of 18th

January, 1990 despite having obtained conditional leave to defend the suit, as they failed to deposit Rs.15,000/- in the Court. For that matter, the revision applications instituted by them, challenging the refusal to grant them unconditional leave in Civil Revision Applications Nos. 348 and 349 of 1990 had also not succeeded. The possible view is that upon the failure of the original defendants for deposit of the amount mentioned in the order dated 18th January, 1990, perhaps, the suit could have been decreed, but, in no case, the suit could have been decreed against petitioner No.2 Smitaben. Presently, this aspect of the matter need not be gone into, as, finally the application of the petitioners dated 24th of May, 1993 is yet to be disposed of by the Executing Court. The challenge in the present revision application is restricted only to rejecting Miscellaneous Civil Application No.284 of 1993, in which interim relief was granted, staying further execution of the decree. Since the rejection was behind the back of the petitioners, in fitness of things, interference is justified in the present revision application. Regard being had to the fact that the petitioners have deposited a sum of Rs.35,000/- when Jangam Warrant was issued and decree was sought to be executed against them, the impugned order was not justified. Hence, the same is quashed and set aside. The executing court is directed to hear their application dated 24th of May, 1993 for setting aside the ex parte decree dated 13th July, 1990 on its own merits and in the meantime, stay of the execution as far as the petitioners are concerned. Revision application succeeds to the extent indicated and rule is made accordingly absolute. There shall be, however, no order as to costs as respondents are not before this Court. Ad interim relief is vacated.

(apj)